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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)**

In re MONICA J., a Person Coming Under
the Juvenile Court Law.

EL DORADO COUNTY DEPARTMENT OF SOCIAL
SERVICES,

Plaintiff and Respondent,

v.

JEANETTE J.,

Defendant and Appellant.

C046272

(Super. Ct. No.
PDP010027)

Jeanette J., mother of the minor, appeals in propria persona from orders of the juvenile court terminating her parental rights and declining to hear her petition for modification. (Welf. & Inst. Code, §§ 366.26, 388 395; further undesignated statutory references are to this code.) Appellant raises numerous contentions relating to the entire dependency proceeding. We affirm the orders.

FACTS AND PROCEEDINGS

In March 2001, the Department of Social Services (DSS) removed the seven-year-old minor from appellant's home based upon allegations that appellant struck the minor with a coat hanger causing physical injury. The court ordered the minor detained. The minor's two older siblings were also named in the dependency petition but were not detained and allegations as to them were not sustained. The jurisdiction report and an early psychological evaluation established that the minor was the focus of tension and stress in the family and subjected to abuse by other family members. The court sustained the petition and adopted a reunification plan which included individual and family therapy and parenting.

By November 2002, after 12 months of services marred by appellant's resistance to therapy and continued focus on her own issues, the court terminated reunification services. The minor's behavior deteriorated while in foster care, due in part to appellant's encouraging her oppositional behavior, and the parties stipulated to placement in a group home.

The assessment for the section 366.26 hearing recommended legal guardianship with the maternal grandparents with continued placement in the group home to stabilize the minor's behavior. DSS also was concerned that appellant would sabotage a placement in the maternal grandparents' home. The group home informed DSS that limited family visits would be in the minor's best interests.

Due to concerns about the minor's serious behavioral problems, DSS had a second psychological evaluation performed. In the evaluation, the minor expressed a desire to return home even if her parents abused her. However, the psychologist observed that in a joint session during the evaluation, there was no significant interaction between the minor and her family. The psychologist concluded appellant's anger issues interfered with the minor's normal development and that the minor needed to be in the group home to have the freedom from stress to deal with her own issues. According to the psychologist, before reunification could occur, the parents had to understand that the minor's problems were due in part to the years of abusive treatment by appellant as well as the minor's reaction to removal from the home. In May 2003, the court selected a permanent plan of guardianship and ordered visitation.

In June 2003, appellant, unable to have third parties observe visits, declined further visitation or participation in the proceedings. Appellant also substituted herself in propria persona, releasing her retained counsel.

By September 2003, DSS requested, and the court ordered, that the minor be placed with the maternal grandparents. The minor was successful in the group home behavioral modification program and was ready for the placement change.

A review report in October 2003 stated appellant had not visited the minor since May 2003 and that parental visits would be detrimental to the minor since they would disrupt her current favorable adjustment to living with the maternal grandparents.

DSS requested the court set another section 366.26 hearing to consider a permanent plan of adoption for the minor.

At the review hearing in October 2003, the court found parental visits detrimental, terminated visitation and set a section 366.26 hearing. The findings and orders adopted by the court contained the appropriate advisement on writ review and the necessary documents were mailed to appellant. Notice of the hearing date and DSS's intention to seek termination of parental rights was sent to and received by the parents.

The assessment for the section 366.26 hearing stated the minor was in good health, in speech therapy and receiving help to improve her academic performance, was no longer taking psychotropic medication, and was continuing in therapy. The maternal grandparents wished to adopt the minor and had shown the ability to provide for the minor's needs. The minor was sad about her parents' lack of contact but wanted to be adopted and have a permanent home if she could not return to her parents. The assessment recommended the minor have ongoing contact with her siblings but not with her parents.

Two weeks before the section 366.26 hearing, appellant filed a lengthy declaration with exhibits styled as a petition for modification and had it set for hearing on the same date as the section 366.26 hearing. Appellant did not provide notice of the petition to the other parties.

At the section 366.26 hearing, the court dismissed appellant's petition for modification due to the lack of notice to the other parties. The court heard testimony from the minor's

father regarding the family's ongoing participation in therapy and their refusal to contact the minor after she was placed with the maternal grandparents because of their poor relationship with the maternal grandmother. Appellant testified that, in her view, the maternal grandparents' home was a totally inappropriate placement for the minor and stated that they had been abusive to her as a child. Both of the minor's siblings expressed a desire to have contact with the minor but were concerned about even calling her at the maternal grandparents' home because the parents feared such calls would also lead to their removal. The court found clear and convincing evidence the minor was likely to be adopted and terminated parental rights. The court adopted the DSS recommendation that the minor and her siblings were permitted to have telephone contact a minimum of twice a week.

DISCUSSION

I

Waiver

In a lengthy brief, appellant raises various claims relating to the total proceedings beginning with the initial detention, the jurisdictional and dispositional hearings, the review hearings, services, visitation, continuances, ex parte orders, changes in the minor's placement, orders setting the first and second section 366.26 hearings, sufficiency of various notices, adequacy of representation, adequacy of the first adoption assessment, and possible bias by DSS employees and the court. To the extent that these issues deal with orders which are final and

which precede the setting of the second section 366.26 hearing, appellant has forfeited them by failing to raise them in a timely fashion. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. 2; *In re Daniel K.* (1998) 61 Cal.App.4th 661, 667; *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1152; *John F. v. Superior Court* (1996) 43 Cal.App.4th 400, 404-405.)

II

Cognizable Issues

To the extent appellant's arguments may be construed to apply to the section 366.26 hearing from which this appeal was taken, the issues are: (1) was appellant given notice of the right to writ review of the order setting the section 366.26 hearing and notice of the section 366.26 hearing; (2) did the juvenile court abuse its discretion in denying a continuance of the hearing and in dismissing the section 388 petition; (3) did the court consider the minor's wishes; and (4) did appellant establish any exceptions to termination of parental rights.

1. Notice

A. Notice of right to writ review

When the juvenile court sets a section 366.26 hearing, it must advise the parties of their right to writ review of the order. (Cal. Rules of Court, rule 1436.5(d).) If the parties are present the advisement is oral, if the parties are not present, the advisement must be sent by first class mail. (*Ibid.*)

Appellant was not present at the hearing and notice by mail was required. The court made the advisement in open court and

ordered that the clerk serve notice on appellant by mail. A copy of the notice of intent and advisement, which was sent to appellant's last known address, appears in the record. The juvenile court did give appellant notice of her right to writ review of the order setting the section 366.26 hearing.

B. Notice of section 366.26 hearing

Notice of the section 366.26 hearing must be complete 45 days before the hearing and may be served by mail or in person. (§ 294, subd. (c).) The record shows notice was timely mailed to the parents on December 19, 2004, and received by them the next day. Moreover, the parents were present at the section 366.26 hearing and had a full opportunity to contest the issues. No prejudice or denial of due process appears. (*In re Melinda J.* (1991) 234 Cal.App.3d 1413, 1418-1419.)

2. Abuse of discretion

A. Request for continuance of 366.26 hearing

Appellant's counsel requested a continuance at the outset of the hearing asserting that she understood the appearance was only to set a contested hearing. The court trailed the matter to permit counsel to confer with appellant. When the proceedings resumed, counsel proceeded without objection.

The juvenile court has discretion to continue the section 366.26 hearing. (*In re Michael R.* (1992) 5 Cal.App.4th 687, 694.) But, that discretion is guided and limited by section 352, subdivision (a), which provides in pertinent part: "Upon request of counsel for the parent . . . the court may continue any hearing under this chapter beyond the time limit within which the

hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor. In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements. [¶] Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance."

Counsel's only showing of cause for the continuance was recent appointment to the case and misunderstanding of the purpose of the hearing. The court accommodated counsel by permitting the case to trail so that counsel could confer with appellant on the issues before the court and decide whether further time was needed. Since counsel was ready to proceed when the case was called, further delay would not have been in the minor's best interests. The court did not abuse its discretion in denying the continuance.

B. Dismissal of the section 388 petition

Appellant filed an affidavit with numerous exhibits intending it to constitute a petition for modification. (§ 388.) No notice of the petition was provided to any of the parties and it was evidently set for hearing without the court's knowledge. However "before the court can modify or set aside any of its previous orders at such a hearing, prior notice must be given." (*In re Natasha A.* (1996) 42 Cal.App.4th 28, 36; see § 386.)

Absent such notice, the juvenile court did not abuse its discretion in dismissing the petition.

3. Consideration of the minor's wishes

"At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child." (§ 366.26, subd. (h).) The statute imposes "a mandatory duty on the courts to 'consider the child's wishes to the extent ascertainable' prior to entering an order terminating parental rights." (*In re Leo M.* (1993) 19 Cal.App.4th 1583, 1591.)

The assessment prepared by DSS for the section 366.26 hearing discussed the minor's wishes. In terminating parental rights, the court made reference to the minor's statements. The record is clear that the court did consider the minor's wishes prior to terminating parental rights.

4. Exceptions to termination of parental rights

"At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must make one of four possible alternative permanent plans for a minor child. . . . *The permanent plan preferred by the Legislature is adoption.* [Citation.]" [Citation.] If the court finds the child is adoptable, it *must* terminate parental rights absent circumstances under which it would be detrimental to the child." (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.) There are only limited circumstances which permit the court to find a "compelling reason for determining that termination [of parental rights] would be detrimental to the child." (§ 366.26, subd. (c)(1).) The party

claiming the exception has the burden of establishing the existence of any circumstances that constitute an exception to termination of parental rights. (*In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252; *In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1373; Cal. Rules of Court, rule 1463(e)(3); Evid. Code, § 500.)

One of the circumstances in which termination of parental rights would be detrimental to the minor is: "The parents . . . have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(A).) The benefit to the child must promote "the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Even frequent and loving contact is not sufficient to establish this benefit absent a significant positive emotional attachment between parent and child. (*In re Teneka W.* (1995) 37 Cal.App.4th 721, 728-729; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419; *In re Brian R.* (1991) 2 Cal.App.4th 904, 924.)

Here, of course, appellant did not maintain regular visitation with the minor. Even before the court found visitation detrimental to the minor, appellant had refused further visitation if her conditions for visits were not met. Appellant's continued focus on her own needs and dismissal of the minor's needs further eroded the parent/child relationship. Additionally, the reports throughout the proceedings established

that the bond between appellant and the minor was not a positive one. Appellant did not meet her burden to show otherwise.

A second circumstance under which termination of parental rights would be detrimental is when "[t]here would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (§ 366.26, subd. (c)(1)(E).)

The court must consider the interests of the adoptive child, not the siblings, in determining whether termination would be detrimental to the adoptive child. (*In re Celine R.* (2003) 31 Cal.4th 45, 49-50; *In re Daniel H.* (2002) 99 Cal.App.4th 804, 812.)

"To show a substantial interference with a sibling relationship the parent must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child. Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952, fn. omitted.)

The evidence from the hearing established that there was a sibling relationship, but that it was not sufficiently significant to outweigh the benefit to the minor of a permanent, stable and loving home. In any case, the court ordered a minimum number of weekly contacts between the siblings and the minor, ensuring continuity of the sibling bond. Appellant did not establish that termination of parental rights would be detrimental to the minor.

DISPOSITION

The orders of the juvenile court are affirmed.

HULL, J.

We concur:

MORRISON, Acting P.J.

CANTIL-SAKAUYE, J.